

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012110589

ORDER OF DISMISSAL

At all times relevant herein, Mother appeared on behalf of Student, and Justin R. Shinnefield, Attorney at Law, appeared on behalf of the Poway Unified School District (District). The prehearing conference in this matter took place on January 23, 2013. The parties prepared and timely exchanged witness lists and exhibit binders. On February 4, 2013, the due process hearing in this matter commenced before Administrative Law Judge (ALJ) Clifford H. Woosley, in Poway, California. After agreeing upon the schedule of witnesses and hearing pretrial motions, one witness testified on direct and cross examination. At the conclusion of the first day of hearing, the District's counsel took ill. ALJ Woosley stated the hearing would go dark on February 5, 2013, permitting District's counsel to consult with his physician. Pursuant to a status conference with both parties on February 5, 2013, the hearing was continued to February 11, 2013.

On February 11, 2013, the hearing reconvened for the second day of hearing. Four witnesses testified and the matter was continued to the next morning. On February 12, 2013, the third day of hearing convened. Mother indicated that she was ill and awaiting a call from her doctor. ALJ Woosley recessed, providing Mother time to consult with her physician; thereafter, Mother stated that she could not continue with the hearing and required a few days to stabilize her health. ALJ Woosley continued the hearing to March 11 through 14, 2013; both parties later confirmed these dates as agreeable with their calendars. On February 27, 2013, OAH contacted both parties, who stated they intended to proceed with the continued hearing on March 11, 2013.

At 6:45 a.m., Monday, March 11, 2013, ALJ Woosley checked with the OAH settlement line and found that there was no message regarding this matter. Accordingly, ALJ Woosley commenced driving to Poway for the fourth day of hearing. At about 8:15 a.m., OAH called and informed ALJ Woosley that Mother had telephoned and stated that she would not be at the hearing, adding that she would be submitting a dismissal of the due process hearing request in writing. ALJ Woosley stated that he would continue on to Poway and convene the fourth day of hearing, unless a signed, written request to withdraw the due process was first received by OAH. At ALJ Woosley's direction, OAH staff informed the parties.

At 9:15 a.m., OAH staff called ALJ Woosley and informed him that OAH received a signed, written request for dismissal from Mother. The request for dismissal stated that Student has no intention of pursuing the matter at a later date and recognized that the dismissal would likely be dismissed with prejudice. Accordingly, ALJ Woosley directed OAH to inform the parties that the hearing would not be convened but, instead, would be dismissed per the Student's request.

APPLICABLE LAW

Neither state or federal special education statutes or regulations nor the California Administrative Procedures Act specifically address requests to withdraw complaints, be it before, during, or after the commencement of a due process hearing. However, Code of Civil Procedure, section 581, et seq., addresses such motions in the context of state civil proceedings.¹ Section 581, subdivision (c), states that a plaintiff may dismiss his or her complaint, or any portion of it, with or without prejudice prior to the actual commencement of trial. Section 581, subdivision (e), states that after the actual commencement of a trial, a court will dismiss a complaint, or any portion of it, with prejudice upon a plaintiff's request, unless all parties consent to dismissal without prejudice or unless the court finds good cause for a dismissal without prejudice.

One OAH order directly addresses and grants a party's request to withdraw its entire case, with prejudice, after a hearing has begun and testimony presented (*Student v. Irvine Unified School District* (2012) Cal.Offc.Admin.Hrngs Case No. 2011110180). There also are some analogous situations where OAH has denied a student's motion to withdraw an issue unilaterally after the case had been submitted (*Student v. Moreno Valley Unified School District* (2009) Cal.Offc.Admin.Hrngs Case No. 2008120285) or, in a case consolidated with a District's due process hearing request, permitted a student to withdraw her case on the first day of hearing, but only with prejudice (*Rialto Unified School District v. Student* (2006) Cal.Offc.Admin. Hrngs Case No. 2005090655.) OAH has also issued orders to show cause as to why a case should not be dismissed with prejudice for failure to prosecute. (See, for example, *Student v. Castro Valley Unified School District*, (2011) Cal.Offc.Admin.Hrngs Case No. 2011020888).

These examples demonstrate that it is appropriate to rely by analogy on Code of Civil Procedure, section 581, subdivision (e), which dictates that a case should be dismissed with prejudice after the commencement of a case unless all parties agree to a dismissal without prejudice or unless there is good cause shown to support a dismissal without prejudice. In this case, the District did not stipulate to the dismissal, with or without prejudice. The fourth day of hearing was scheduled to begin, five witnesses had testified, and numerous documents had been admitted into evidence. The Student called the witnesses, who were District employees whose appearances were facilitated by the District, enabling them to testify during the school day. Additionally, the District expended considerable resources and time

¹ All further statutory references are to the Code of Civil Procedure.

in defending the case filed by Student. Student's request to withdrawal is granted because the Student acknowledged that it would likely be entered with prejudice. Otherwise, the District would unfairly be exposed to the possibility of Student re-filing a complaint on the same issues, necessitating a new hearing on the same matters, necessitating duplicative expenditure of time and effort.

ORDER

1. Student's request to dismiss this matter is granted.
2. The matter is dismissed with prejudice to refile on the same issues.

Dated: March 12, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings